

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

File No. 16-20344

v.

HON. THOMAS L. LUDINGTON

ROBERT RAY CASTILLO,

Defendant/Petitioner.

**ORDER GRANTING IN PART RESPONDENT'S MOTION TO STRIKE
AND SEALING PETITIONER'S BRIEF**

On May 11, 2016, Petitioner, Robert Ray Castillo, was indicted for aggravated sexual abuse and sexual abuse. ECF No. 12. He pled guilty on December 7, 2016 (ECF No. 36) and was sentenced on September 12, 2017 (ECF Nos. 50, 51). Petitioner did not appeal. On April 29, 2019, Petitioner filed a petition for writ of habeas corpus, arguing he is eligible for relief under 28 U.S.C. § 2255. ECF No. 52. The case was originally docketed in the Southern Division of the Eastern District of Michigan as case number 19-cv-11238. Judge Goldsmith transferred the case to the Eastern District of Virginia because the complaint was filed on a 28 U.S.C. §2241 form. 19-cv-11238 at ECF No. 3. Judge Smith of the Eastern District of Virginia read the complaint and decided that despite the form Petitioner used for his complaint, it was “clear that Castillo is attacking the imposition of his sentence under § 2255 and not the conditions of his confinement or the execution of his sentence under § 2241.” ECF No. 52-1 at PageID.257. Therefore, Judge Smith transferred the case back to the Eastern District of Michigan. *Id.* When the case returned to the Eastern District of Michigan, the case was reassigned from Judge Goldsmith to Judge Ludington because it is a

companion case to 16-20344. ECF No. 7. The civil case, no. 19-11238, was later closed and the petition docketed to the underlying criminal case. ECF No. 52.

Respondent, United States of America, filed a motion to dismiss on September 5, 2019 contending that the Petition was untimely filed. ECF No. 56. On September 10, 2019 Petitioner filed a response to the motion and on September 16, 2019 filed a brief. ECF Nos. 57, 58. On September 19, 2019, Respondent's motion to dismiss was granted and Petitioner's motion to vacate was dismissed. ECF No. 59. Later that same day, Respondent filed a motion to strike five pages of Defendant's brief – four pages of grand jury testimony and one page of the victim's medical records. ECF No. 61.

The one page of the victim's medical records includes her name, her city, phone number, and medical history. Additionally, the brief includes two pages of the victim's grand jury testimony and two pages of the additional grand jury testimony by an unknown witness. The attachments cannot be struck because they are part of the brief itself and are not separate exhibits. However, for the privacy of the victim, the medical record should not be publicly available on the docket, Fed. R. Crim. Pro. 49.1, nor should the grand jury testimony be publicly available, Fed. R. Crim. Pro. 6(e)(2). As such, Petitioner's entire brief will be sealed.

Therefore, it is **ORDERED** that Respondent's motion to strike, ECF No. 61, is **GRANTED IN PART**.

It is further **ORDERED** that the Clerk of Court is directed to seal Petitioner's brief, ECF No. 58.

Dated: September 30, 2019

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States Magistrate Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means and upon Robert Ray Castillo #54618039 at Petersburg Medium Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 90043, Petersburg, VA 23804 by first class U.S. mail on September 30, 2019.

s/Suzanne Gammon
SUZANNE GAMMON